

FILED

APR 10 2023

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_  
DEPUTY CLERK

VICTOR MANUEL GOMEZ CRUZ  
Federal Correctional Institution  
F.C.I. Herlong  
P.O. Box 800  
Herlong, CA 96113

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

VICTOR MANUEL GOMEZ CRUZ,  
PETITIONER,

v.

WARDEN, F.C.I. HERLONG,  
RESPONDENT.

S CASE NO. 2:23-cv-00664 KJN

S MOTION PURSUANT TO U.S.C. § 2241  
S SEEKING APPLICATION OF EARNED  
S FEDERAL TIME CREDITS THROUGH THE  
S FIRST STEP ACT (F.S.A.)

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S

COMES, VICTOR MANUEL GOMEZ CRUZ, PETITIONER, who is a federal inmate serving a sentence at F.C.I. Herlong in the State of California. He moves this court to grant this writ, and ORDER the Bureau of Prisons (BOP) to apply the earned FSA time credits that he has earned through various programs, in accordance with the Act.

This Court, having familiarity with Motions of this nature, should read the filing, examine the attached supporting evidence, and swiftly order the BOP to apply the earned time credits.

I. ARGUMENT

Since the passage of the First Step Act, there has been serious deficiencies in the application of the 'earned time credits' to federal inmates, especially ones with possible immigration issues.

The BOP has waffled, and has changed the prgrom statement to allow all persons that do not have a "FINAL ORDER" of deportation to have earned credits applied, however, the BOP system is not making the sentence adjustments uniformly, and many people are having to

file writs in federal courts under 28 U.S.C. § 2241, seeking the credits to be ORDERED by courts. It is under this pressure, that the BOP seems responsive. Accordingly, this petitioner is asking for the same relief that is due.

Here, the petitioner has a PATTERN SCORE of 28, and is further classified as a LOW risk of recidivism. Due to these classifications, he is eligible to have the credits applied.

Thus far, this petitioner has earned TBD days towards early release, but his credits have not been applied thus far, and is asking this court to ORDER them to be properly applied according to the Act.

The petitioner has a tentative release date of: 11-07-2024. This petitioner is not subject to any final order of deportation, and so until that is established by an Immigration Court, his eligibility to earn and have applied, FSA time credits is a liberty interest that must be applied universally to all persons.

The BOP's current Program Statement that details the implementation of the First Step Act of 2018 clearly shows the language stricken that was used previously to bar persons with 'possible' deportation issues, or warrants, or detainees, or pending charges. Because none of these situations effect the actual release of an inmate, because there is no RCC/HC placement for these people, the effects of earning good time or earned FSA times are unaffected by possible, or pending immigration issues. As such, these credits must be applied.

Attached is EXHIBIT "A", FSA TIME CREDIT ASSESSMENT, showing how many credits this petitioner has earned. Attached is EXHIBIT "B",

**PROGRAM REVIEW SHEET, showing the RISK to RE-OFFEND level and the current release date without the credits.**

These exhibits demonstrate that this petitioner has earned the credits, is eligible to receive them, and has a score that commensurates with the application of the Act.

**II. RELIEF REQUESTED**

For all of the above mentioned reasons, this petitioner respectfully requests that this Court GRANT the writ, and further ORDER the BOP to apply the earned credits in accordance with the First Step Act, and to further calculate the release date to reflect the proper application of these earned time credits.

Dated this 4<sup>TH</sup> day of APRIL, 2023.

Respectfully submitted,

Victor M Gomez Guz

Pro Se

**FSA Time Credit Assessment**

Register Number:44312-013, Last Name:GOMEZ-CRUZ

**U.S. DEPARTMENT OF JUSTICE****FEDERAL BUREAU OF PRISONS**

Register Number....: 44312-013	Responsible Facility: HER
Inmate Name	Assessment Date.....: 03-25-2023
Last.....: GOMEZ-CRUZ	Period Start/Stop....: 12-21-2018 to 03-25-2023
First.....: VICTOR	Accrued Pgm Days....: 0
Middle.....: MANUEL	Disallowed Pgm Days.: 0
Suffix.....:	FTC Towards RRC/HC..: 0
Gender.....: MALE	FTC Towards Release.: null
Start Incarceration: 05-02-2018	Apply FTC to Release: No

Start	Stop	Pgm Status	Pgm Days
12-21-2018	03-25-2023	ineligible	0

**FSA ineligible**

Facility	Category	Assignment	Start	Stop
HER	FSA	FTC INELIG	05-12-2021	1530 CURRENT

**--- FSA Assessment -----**

#	Start	Stop	Status	Risk	Assignment	Risk Asn	Start	Factor
001	12-21-2018	01-18-2019	ACTUAL	FSA	R-LW	04-28-2021	2009	10
002	01-18-2019	07-17-2019	ACTUAL	FSA	R-LW	04-28-2021	2009	10
003	07-17-2019	01-13-2020	ACTUAL	FSA	R-LW	04-28-2021	2009	15
004	01-13-2020	07-11-2020	ACTUAL	FSA	R-LW	04-28-2021	2009	15
005	07-11-2020	01-07-2021	ACTUAL	FSA	R-LW	04-28-2021	2009	15
006	01-07-2021	07-06-2021	ACTUAL	FSA	R-LW	04-28-2021	2009	15
007	07-06-2021	01-02-2022	ACTUAL	FSA	R-LW	04-28-2021	2009	15
008	01-02-2022	07-01-2022	ACTUAL	FSA	R-LW	11-03-2021	1242	15
009	07-01-2022	12-28-2022	ACTUAL	FSA	R-LW	04-05-2022	2052	15
010	12-28-2022	06-26-2023	ACTUAL	FSA	R-LW	09-15-2022	1034	15

**Individualized Needs Plan - Program Review (Inmate Copy)**

SEQUENCE: 02072893

Dept. of Justice / Federal Bureau of Prisons

Plan is for inmate: GOMEZ-CRUZ, VICTOR MANUEL 44312-013

TEAM DATE: 03-03-2023

Facility: HER HERLONG FCI

Proj. Rel. Date: 11-07-2024

Name: GOMEZ-CRUZ, VICTOR MANUEL

Proj. Rel. Mthd: GOOD CONDUCT TIME

Register No.: 44312-013

DNA Status: GPC01657 / 06-05-2018

Age: 34

Date of Birth: 09-17-1988

**Detailers**

Detaining Agency	Remarks
ICE	BIOMETRIC CONFORMATION OF THE ALIENS IDENTITY AND A CHECK OF FEDERAL DATABASES THAT AFFIRMATIVELY THEMSELVES OR IN ADDITION TO OTHER RELIABLE

**Current Work Assignments**

Facl	Assignment	Description	Start
NO ASSIGNMENTS			

**Current Education Information**

Facl	Assignment	Description	Start
HER	ESL EXEMPT	ESL NEED-PERMANENTLY EXEMPT	06-06-2018
HER	GED XN	EXEMPT GED NON-PROMOTABLE	06-06-2018

**Education/Courses**

SubFacl	Action	Description	Start	Stop
HER		ESL CLASS 12:30-2:30PM	07-06-2021	CURRENT
HER	C	DIST SS1	12-06-2021	12-10-2021
HER	C	DIST SS1	08-20-2021	08-27-2021

**Discipline History (Last 6 months)**

Hearing Date	Prohibited Acts
** NO INCIDENT REPORTS FOUND IN LAST 6 MONTHS **	

**Current Care Assignments**

Assignment	Description	Start
CARE1	HEALTHY OR SIMPLE CHRONIC CARE	04-19-2021
CARE1-MH	CARE1-MENTAL HEALTH	05-05-2021

**Current Medical Duty Status Assignments**

Assignment	Description	Start
REG DUTY	NO MEDICAL RESTR--REGULAR DUTY	06-14-2018
YES F/S	CLEARED FOR FOOD SERVICE	06-14-2018

**Current Drug Assignments**

Assignment	Description	Start
DAP NO INT	DRUG ABUSE PROGRAM NO INTEREST	05-04-2021
ED NONE	DRUG EDUCATION NONE	05-12-2021

**FRP Payment Plan**

Most Recent Payment Plan				
FRP Assignment:	COMPLT	FINANC RESP-COMPLETED	Start: 05-12-2021	
Inmate Decision:	AGREED	\$25.00	Frequency: QUARTERLY	
Payments past 6 months:	\$0.00		Obligation Balance: \$0.00	

**Financial Obligations**

No.	Type	Amount	Balance	Payable	Status
1	ASSMT	\$200.00	\$0.00	IMMEDIATE	COMPLETEDZ

\*\* NO ADJUSTMENTS MADE IN LAST 6 MONTHS \*\*

**FRP Deposits**

**Individualized Needs Plan - Program Review (Inmate Copy)**

SEQUENCE: 02072893

Dept. of Justice / Federal Bureau of Prisons

Plan is for inmate: GOMEZ-CRUZ, VICTOR MANUEL 44312-013

Team Date: 03-03-2023

Trust Fund Deposits - Past 6 months: \$1,011.05

Payments commensurate ? Y

New Payment Plan: \*\* No data \*\*

**Current FSA Assignments**

Assignment	Description	Start
FTC INELIG	FTC-INELIGIBLE-REVIEWED	05-12-2021
N-ANGER N	NEED - ANGER/HOSTILITY NO	03-01-2023
N-ANTISO Y	NEED - ANTI SOCIAL PEERS YES	03-01-2023
N-COGNTV N	NEED - COGNITIONS NO	03-01-2023
N-DYSLEX N	NEED - DYSLEXIA NO	05-30-2021
N-EDUC Y	NEED - EDUCATION YES	03-01-2023
N-FIN PV N	NEED - FINANCE/POVERTY NO	03-01-2023
N-FM/PAR Y	NEED - FAMILY/PARENTING YES	03-01-2023
N-M HLTH N	NEED - MENTAL HEALTH NO	03-01-2023
N-MEDICL N	NEED - MEDICAL NO	03-01-2023
N-RLF N	NEED - REC/LEISURE/FITNESS NO	03-01-2023
N-SUB AB N	NEED - SUBSTANCE ABUSE NO	03-01-2023
N-TRAUMA N	NEED - TRAUMA NO	03-01-2023
N-WORK Y	NEED - WORK YES	03-01-2023
R-LW	LOW RISK RECIDIVISM LEVEL	03-01-2023

**Progress since last review**

You have not completed any programs since your last review but are currently participating in ESL classes.

**Next Program Review Goals**

Enroll in GED and Parenting by your next review.

**Long Term Goals**

Complete ESL, GED, and Parenting by March 2024.

**RRC/HC Placement****Comments**

Treaty Transfer: Eligible and not interested.

You will be reviewed for RRC placement/ Home Detention consideration in accordance with the 2nd Chance Act of 2007 and the 5-Factor Criteria in 18 USC 3621(b). Your review will be conducted 17-19 months prior to your release. Notify your Case Manager if your release address/plans change via Inmate Request to Staff form.

Resolve any possible warrant or detainees and report any possible pending charges the Bureau of Prisons may not be aware of. If the Bureau of Prisons becomes aware of any pending charges, it will negatively affect your halfway house process. Inmates with pending charges or detainees cannot receive any halfway house placement until these issues are resolved.